

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-807
)	
Scott E. Kamm)	NAL/Acct. No. 200332560008
)	
Licensee of Amateur Station N0UGN)	FRN 0006-5376-58
)	
Sioux City, Iowa		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 24, 2003

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Scott E. Kamm, licensee of amateur radio station N0UGN, apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000) for willful and repeated violation of Sections 97.101(d), 97.113(a)(4) and 97.119(a) of the Commission’s Rules (“Rules”).¹ Specifically, we find Mr. Kamm apparently liable for causing intentional interference, broadcasting music and failing to identify with his station call sign.

II. BACKGROUND

2. On December 9, 2002, in response to complaints of continuing interference on Amateur Radio Service frequency 146.31 MHz, an agent of the Commission’s Kansas City Field Office monitored the frequency. At approximately 7:00 P.M., the agent observed very strong signals on the frequency 146.31 MHz consisting of music, sound effects and unmodulated carriers. No station identification was transmitted. These transmissions were observed interfering with existing communications that were in progress between other amateur stations. Using radio direction finding equipment and techniques, the agent determined the source of these interfering signals to be Mr. Kamm’s residence located at 1950 207th St., Waterbury, Nebraska.

3. On December 10, 2002, at approximately 5:34 A.M., the agent monitored 146.31 MHz and again observed very strong transmissions consisting of music, sound effects and unmodulated carriers interfering with existing communications that were in progress between other amateur stations. No station identification was transmitted. Using radio direction finding equipment and techniques, the agent

¹ 47 C.F.R. §§ 97.101(d), 97.113(a)(4) and 97.119(a).

determined the source of these signals again to be Mr. Kamm's residence located at 1950 207th St., Waterbury, Nebraska.

4. Still on December 10, 2002, the agent inspected Mr. Kamm's amateur radio station N0UGN at his residence at 1950 207th St., Waterbury, Nebraska. The agent found an amateur radio transmitter capable of operating on 146.31 MHz. Mr. Kamm stated that no transmissions are made from his station and that he uses it to receive only. Mr. Kamm stated that no other persons operated the radio station.

III. DISCUSSION

5. Section 97.101(d) of the Rules states no amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal. Section 97.113(a)(4) of the Rules prohibits any amateur station from transmitting music using a phone emission. Section 97.119(a) of the Rules requires each amateur station to transmit its assigned call sign on its transmitting channel at the end of each communication or at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmission. No station may transmit unidentified communications or signals, or transmit as the station call sign, any call sign not authorized to the station. Scott E. Kamm is the licensee of amateur radio station N0UGN. On December 9 and 10, 2002, Mr. Kamm's amateur radio station transmitted unidentified transmissions consisting of music, sound effects, and unmodulated carriers. These transmissions occurred during ongoing transmissions by other authorized amateur radio stations, resulting in interference to those transmissions.

6. Based on the evidence before us, we find that Mr. Kamm willfully² and repeatedly³ violated Sections 97.101(d), 97.113(a)(4) and 97.119(a) of the Rules by causing intentional interference, broadcasting music and failing to identify with his station call sign.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for intentional interference is \$7,000. The base forfeiture amount for failure to identify a station is \$1,000. The Rules do not establish a base forfeiture amount for violating the Commission's amateur radio rules regarding transmission of music. Therefore, we must determine an appropriate forfeiture amount for this violation.⁵

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from

The rule that amateur stations not broadcast music is similar in both nature and severity to the use of unauthorized emissions. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at \$4,000 for use of an unauthorized emission. Therefore, we will assess the base forfeiture for an amateur station broadcasting music in the amount of \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁶ Considering the entire record and applying the factors listed above, this case warrants a \$12,000 forfeiture.

IV. ORDERING CLAUSES.

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Scott E. Kamm is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for willful and repeated violation of Sections 97.101(d), 97.113(a)(4) and 97.119(a) of the Commission’s Rules for causing intentional interference, broadcasting music and failing to identify with his station call sign.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Scott E. Kamm SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2)

the Forfeiture Policy Statement and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

⁶ 47 U.S.C. § 503 (b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ *See* 47 C.F.R. § 1.1914.

financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Scott E. Kamm, 3290 N. Martha Lot 80, Sioux City, IA. 51105. An additional copy shall be sent by regular mail and Certified Mail Return Receipt Requested to Scott E. Kamm, 1950 207th St., Waterbury, NE 68785-2605.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director
Kansas City Office
Enforcement Bureau

Attachment